FILED

NOT FOR PUBLICATION

FEB 17 2006

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY PASSARELLI,

No. 04-17326

Petitioner - Appellant,

D.C. No. CV-00-01922-WBS/DAD

V.

R. Q. HICKMAN; et al.,

MEMORANDUM*

Respondents - Appellees.

Appeal from the United States District Court for the Eastern District of California William B. Shubb, District Judge, Presiding

Submitted February 13, 2006 **

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Henry Passarelli, a California state prisoner, appeals *pro se* the denial of his 28 U.S.C. § 2254 habeas corpus petition, challenging his conviction by guilty plea for first degree burglary. We have jurisdiction under 28 U.S.C. §§ 1291 and 2253, and we affirm the district court.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We reject Passarelli's contention that he received ineffective assistance of counsel. The state courts' determination of this issue was not an unreasonable application of clearly established federal law. *See* 28 U.S.C. § 2254(d); *see also Weighall v. Middle*, 215 F.3d 1058, 1062 (9th Cir. 2000). There is no indication that counsel rendered deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Moreover, Passarelli has failed to show any prejudice from these alleged errors because the record contains overwhelming evidence of his guilt. *See id.* at 692.

The state courts also did not err in rejecting Passarelli's contention that his guilty plea was invalid. *See Moran v. McDaniel*, 80 F.3d 1261, 1268 (9th Cir. 1996) (noting that the factual findings of state courts are presumed correct).

Passarelli's contention that his three strikes sentence violated the Ex Post Facto Clause lacks merit. *See Brown v. Mayle*, 283 F.3d 1019, 1040 (9th Cir. 2002), *vacated on other grounds*, 538 U.S. 901 (2003).

We construe the remaining contentions in the opening brief which fall outside the scope of the certificate of appealability as a request to broaden the certificate of appealability, and deny the request. *See* 9th Cir. R. 22-1(e).

AFFIRMED